IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL REVISION No. 232 of 2007

BADAR RAM & ORS.
V/S
RAM SUKH

Mr. KC SAMDARIYA, for the appellant / petitioner

Date of Order : 24.9.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

By the impugned order, the learned Executing Court has dismissed the petitioner's application filed under Section 47 C.P.C.

Assailing the impugned order it was contended that after death of the deceased when the application was moved for impleadment of the legal representatives, notices were not properly served, then one of the legal representatives being present petitioner no. 3 was a minor, and no guardian ad litem was appointed. Next submission made is that the present petitioner Badar Ram had not been substituted, and that other legal representatives of the deceased were also not brought on record. Likewise, it was also contended that after the legal representatives were taken on record, no fresh notice of the suit were issued to them, the other

submission made is that one of legal representatives petitioner Shravan Ram was represented by the counsel, which counsel pleaded no instructions, but then no notice was thereafter again given to him, and therefore, the decree sought to be executed is a nullity, and the impugned order be, therefore, set aside. Learned counsel relied upon few judgments of Allahabad High Court, Calcutta High Court, and this Court.

I have heard learned counsel, and perused the impugned order, and have gone through the judgments. At my request, learned counsel made available to me for perusal, the application filed before the Executing Court under Section 47 C.P.C., and a look at the application shows, that the objections taken therein are, that before passing of the decree defendant Bhanwarlal had had died, and without impleading his legal representatives suit has been decreed against the deceased which decree is a nullity. Then, list of legal representatives has been given, and in para-4 it is contended that the daughters of Bhanwarlal had not been impleaded as party, who were also having their right in the property, and were living in the same property, the other objection taken is, that notice under Order 21 Rule 22 has not been properly served, as the notice purport to be received under signature of petitioner Badar Ram, while Badar Ram does not put signature, but only puts his thumb mark. Then, other objection taken is that

the decree holder has no legal right on the property, he is not the owner, and he had never been in possession, and therefore, his letting out to Bhanwarlal is also not in accordance with law, and that it was only when the decree holder came to take possession of the property that they came to know of the decree. With these objections, it was prayed that the execution proceedings be dismissed.

In other words practically all the objections taken before this Court have not been taken in the application under Section 47 C.P.C., inasmuch as, this is not the objection that when the suit was decreed Jagdish was minor, or that guardian ad litem was not appointed, or that notice of the suit was not given after substitution to the legal representatives, or that, fresh notice was not given after no instruction was pleaded by counsel for Shravan Ram. In my view, that being the position various judgments cited by the learned counsel for the petitioner are of no assistance to him. The fact does remain, that in substance the contention appears to be that the service in the suit was not properly effected, but then admittedly the decree has not been challenged by filing any appeal, or the like.

So far the other legal representatives are concerned, the present suit is for eviction, and even Sharavan Ram who had appeared had also not raised any

objection about there being any other legal representatives on whom the tenancy had devolved.

In my view, in view of the above, there is no error on the part of the learned Executing Court in passing the impugned order.

The revision thus has no force, and is dismissed summarily.

(N P GUPTA),J.

/Sushil/